

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Implementation of the Satellite Home Viewer	)	
Extension and Reauthorization Act of 2004	)	MB Docket No. 05-49
	)	
Implementation of Section 340 of the	)	
Communications Act	)	

To: The Commission

**CONSOLIDATED REPLY TO OPPOSITIONS**

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## **EXECUTIVE SUMMARY**

In their Joint Reply, the Broadcaster Parties fundamentally misread, misunderstand, and misstate Commission procedure, the substantive law of SHVERA, and DIRECTV and EchoStar's Petition for Reconsideration. DIRECTV and EchoStar have satisfied the threshold requirements for seeking reconsideration in this proceeding and the Petition for Reconsideration is procedurally sound. The examples offered by the Broadcaster Parties of how local and significantly viewed stations are permitted to be carried without being afforded equal bandwidth are either irrelevant to the Commission's interpretation of the Equivalent Bandwidth Requirement or fail to rebut DIRECTV and EchoStar's premise that the Commission's comparative bit rate approach amounts to an equal bandwidth requirement. The requirements of the comparative bit rate approach are technically infeasible and, if implemented, would result in program disruptions and consumer frustration. Likewise, the Analog Service Requirement should be given its plain meaning, which is in the best interest of consumers.

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Pursuant to Section 1.429(g) of the rules of the Federal Communications Commission (“Commission”),<sup>1</sup> DIRECTV, Inc. (“DIRECTV”) and EchoStar Satellite LLC (“EchoStar”) jointly file this Consolidated Reply to the Joint Opposition of the National Association of Broadcasters and of the ABC, CBS, FBC, and NBC Television Affiliate Associations (collectively, the “Broadcaster Parties”)<sup>2</sup> filed against DIRECTV and EchoStar’s Petition for Reconsideration (the “Petition”) in the above-captioned proceeding.<sup>3</sup> The Broadcaster Parties

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<sup>1</sup> 47 C.F.R. § 1.429(g). Concurrently with this Consolidated Reply, DIRECTV and EchoStar are filing a Motion to Exceed Page Limitation in this proceeding.

<sup>2</sup> Joint Opposition of the National Association of Broadcasters and of the ABC, CBS, FBC, and NBC Television Affiliate Associations to Petition for Reconsideration, MB Docket No. 05-49 (filed Mar. 2, 2006) (“Joint Opposition”). Saga Broadcasting, LLC and Saga Quad States Communications, LLC (jointly, “Saga”) also filed an opposition, which raises objections to the Petition similar to those raised by the Broadcaster Parties. *See* Opposition to Petition for Reconsideration of Saga Broadcasting, LLC and Saga Quad States Communications, LLC, MB Docket No. 05-49 (filed Mar. 2, 2006) (“Saga Opposition”). This consolidated Reply responds to the Saga Opposition separately where indicated.

<sup>3</sup> *See Implementation of the Satellite Home Viewer Extension and Reauthorization Act of 2004, Implementation of Section 340 of the Communications Act*, Report and Order, MB Docket No. 05-49, FCC 05-187 (rel. Nov. 3, 2005) (“R&O”). In the R&O, the Commission adopted rules to authorize satellite operators to retransmit the significantly viewed (“SV”) signals of out-of-market broadcast television stations pursuant to Section 202 of the Satellite Home Viewer Extension and Reauthorization Act of 2004 (“SHVERA”). *See id.*; *see also* The Satellite Home Viewer Extension

fundamentally misread, misunderstand, and misstate the Petition, Commission procedure, and the substantive law of SHVERA, but they are nevertheless correct on one point. It is true that DIRECTV and EchoStar currently are offering the signals of significantly viewed (“SV”) stations to their subscribers in only a limited number of markets.<sup>4</sup> This shortfall, however, is not due to lack of consumer demand for SV signals. Rather, it is largely attributable to the Commission’s overly restrictive interpretations of SHVERA’s requirements in this proceeding, which have deterred DIRECTV and EchoStar from offering SV signals to subscribers and continue to deprive consumers of an important benefit conferred by Congress.

#### **I. DIRECTV AND ECHOSTAR HAVE STANDING TO SEEK RECONSIDERATION.**

The Broadcaster Parties contend that the Petition should be dismissed on procedural grounds because “it does not meet the threshold requirement for reconsideration” and because “Petitioners fail to provide sufficient new facts to warrant reconsideration.”<sup>5</sup> The Broadcaster Parties misconstrue and misstate the Commission’s standard for the filing of petitions for reconsideration in a rulemaking proceeding.

The Commission’s rules provide that “[a]ny interested person may petition for reconsideration of a final action in a [rulemaking] proceeding”<sup>6</sup> and that “[t]he petition for reconsideration shall state with particularity the respects in which the petitioner believes the action taken should be changed.”<sup>7</sup> The *R&O* adopted in this proceeding had become final at the time the

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and Reauthorization Act of 2004, Pub. L. No. 108-447, § 202, 118 Stat. 2809, 3393 (2004) (codified at 47 U.S.C. § 340).

<sup>4</sup> See Joint Opposition at 2.

<sup>5</sup> Joint Opposition at 2; *see also id.* at 8.

<sup>6</sup> 47 C.F.R. § 1.429(a).

<sup>7</sup> 47 C.F.R. § 1.429(c).

Petition was filed.<sup>8</sup> DIRECTV and EchoStar are preeminently interested parties in this proceeding, which establishes rules for direct broadcast satellite (“DBS”) carriage of SV television signals. The Petition states with particularity the holdings in the *R&O* of which DIRECTV and EchoStar sought reconsideration and demonstrates how the Commission’s interpretations of SHVERA are materially in error. Nothing more is required under the Commission’s rules to seek reconsideration in a rulemaking proceeding.<sup>9</sup>

Consequently, the suggestion by the Broadcaster Parties that DIRECTV and EchoStar must present new facts as a prerequisite for seeking reconsideration misconstrues the Commission’s rules.<sup>10</sup> The standards for reconsideration set forth in Section 1.429(b) govern only the grant of petitions that rely on new facts which have not previously been presented to the Commission.<sup>11</sup> The Petition seeks reconsideration of the Commission’s statutory interpretation of SHVERA, which was materially in error. It does not rely on new factual arguments. Thus, the provisions of Section 1.429(b) are inapplicable.

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<sup>8</sup> Commission action is deemed final, for purposes of seeking reconsideration at the Commission or judicial review, on the date of public notice. *See* 47 C.F.R. § 1.103(b). The date of public notice for orders in notice and comment rulemaking proceedings is the date of publication in the Federal Register. *See* 47 C.F.R. § 1.4(b)(1). The Report and Order in this proceeding was published in the Federal Register on December 27, 2005, on which date it became final. *See* 70 Fed. Reg. 76504 (Dec. 27, 2005). In accordance with Section 1.429(d) of the Commission’s rules, the Petition was timely filed on January 26, 2006, which was 30 days after Federal Register publication of *R&O*. *See* 47 C.F.R. § 1.429(d).

<sup>9</sup> *See, e.g., Direct Broadcast Satellite Public Interest Obligations*, Second Order on Reconsideration of First Report and Order, 19 FCC Rcd 5647, ¶ 7 (2004) (“Reconsideration is appropriate only where the petitioner *either* shows a material error or omission in the original order *or* raises additional facts not known or existing at the petitioner’s last opportunity to present such matters. A petition for reconsideration of a final rulemaking proceeding must state with particularity the respects in which the petitioner believes the action taken by the Commission should be changed.”(emphasis added)).

<sup>10</sup> *See* Joint Opposition at 2; *see also id.* at 8.

<sup>11</sup> *See* 47 C.F.R. § 1.429(b).

DIRECTV and EchoStar have satisfied the threshold requirements for seeking reconsideration in this proceeding and the Petition is procedurally sound. Accordingly, the Commission should reject the Broadcaster Parties' argument that the Petition be dismissed on procedural grounds.

## **II. THE COMMISSION'S COMPARATIVE BIT RATE APPROACH AMOUNTS TO AN EQUAL BANDWIDTH REQUIREMENT.**

In the Petition, DIRECTV and EchoStar explain how the Commission's overly narrow interpretation of SHVERA's requirement that local and SV network station pairs be afforded "equivalent bandwidth" (the "Equivalent Bandwidth Requirement") actually imposes an objectively equal bandwidth requirement on DBS operators.<sup>12</sup> The Broadcaster Parties assert that DIRECTV and EchoStar "essentially propose" to "read the 'equivalent bandwidth' requirement out of the statute" resulting "in the very type of material discrimination that Congress sought to proscribe."<sup>13</sup> In fact, DIRECTV and EchoStar propose the opposite. The Petition demonstrates that the Commission itself has read the Equivalent Bandwidth Requirement out of the statute based on interpretative inferences for which there is no textual basis in SHVERA.<sup>14</sup> The Petition further demonstrates that the Commission's overly narrow interpretation of the Equivalent Bandwidth Requirement effectively precludes compliance and makes it impracticable for DBS operators to provide SV signals to subscribers.<sup>15</sup> Consequently, DIRECTV and EchoStar ask the Commission to reconsider its adoption of what amounts to an "equal bandwidth" requirement in

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<sup>12</sup> See Petition at 2-8.

<sup>13</sup> Joint Opposition at iv. Ironically, this statement from the Broadcaster Parties would seem to concede DIRECTV and EchoStar's position that Congress intended the Equivalent Bandwidth Requirement to proscribe only "material discrimination" and not to require a moment-by-moment comparison of each station's bit rate.

<sup>14</sup> See Petition at 5-6.

<sup>15</sup> See *id.* at 7.

favor of an interpretation that is true to the text and purposes of SHVERA while protecting local network affiliates against material carriage discrimination.<sup>16</sup>

The Broadcaster Parties further contend that the Petition does not contain “a single example” of how the Commission’s comparative bit rate approach to the Equivalent Bandwidth Requirement amounts to an equal bandwidth requirement.<sup>17</sup> As the Petition clearly states, the Commission’s comparative bit rate approach can be read to require: (1) an “objective comparison” of the SV and local network station’s use of its respective 6 MHz of bandwidth in terms of megabits per second (mbps), or bit rate;<sup>18</sup> (2) an “objective comparison” of the satellite operator’s carriage of each station in terms of mbps, or bit rate;<sup>19</sup> (3) the satellite operator to monitor when local and SV network stations switch from high definition (“HD”) signals to multicast signals, and vice versa;<sup>20</sup> and (4) the satellite operator to adjust carriage of each station based on their HD and multicast programming schedules.<sup>21</sup> To the extent that these requirements may be interpreted to oblige DBS operators to afford objectively equal bandwidth to local and SV stations at all times, compliance is both technically infeasible and commercially impracticable

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<sup>16</sup> See *id.* 6-8. Saga asserts that “[s]atellite providers should not be permitted to degrade the broadcast signal to carry it and the signal must include all embedded data that comes with the signal (like closed captioning).” Saga Opposition at 3. Saga’s interpretation of the Equivalent Bandwidth Requirement in this respect is truer to the text and purposes of SHVERA than the Commission’s overly restrictive interpretation.

<sup>17</sup> Joint Opposition at 3. Along these same lines, Saga contends that DIRECTV and EchoStar “seek not to have to provide equal bandwidth to locally carried stations.” Saga Opposition at 3. Saga is correct in this regard. SHVERA plainly requires only equivalent bandwidth to be afforded to local stations, not equal bandwidth. Saga errs, however, when it asserts that “the requirement to provide equal bandwidth to locally carried stations...is a primary rule for cable.” *Id.* Cable operators are under no obligation to afford local and SV network stations equivalent, much less “equal,” bandwidth, which places DBS operators at a competitive disadvantage to cable operators from the outset.

<sup>18</sup> See Petition at 2-3, citing *R&O*, ¶ 96.

<sup>19</sup> See *id.*

<sup>20</sup> See Petition at 3, citing *R&O*, ¶ 100.

<sup>21</sup> See *id.*



because signal carriage cannot be adjusted in real time based on the ever changing HD and multicast schedules of different broadcast stations.<sup>22</sup>

The Broadcaster Parties next assert that the *R&O* is replete with examples of how local and SV stations are permitted to be carried without being afforded equal bandwidth. First, the Broadcaster Parties cite to the Commission's conclusions in the *R&O* that if a SV station broadcasts a HD signal or several multicast signals and the local station broadcasts only a single standard definition ("SD") signal, a satellite carrier still is permitted to carry the SV station's HD or multicast signals.<sup>23</sup> The Commission's conclusions in both of these situations, however, relate to SHVERA's alternative to the Equivalent Bandwidth Requirement, which is that the signal of a local network station must be comprised of its entire bandwidth when not broadcasting in HD or multicast formats (the "Entire Bandwidth Requirement").<sup>24</sup> The Commission's comparative bit rate approach to the Equivalent Bandwidth Requirement is inapposite in these situations because

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<sup>22</sup> See Petition at 3; see also *R&O*, ¶ 99 (describing the comparative bit rate approach as an objective measure intended "to ensure that the bandwidth devoted to the SV signal does not exceed the bandwidth devoted to the local station's signal"). The Broadcaster Parties also attempt to draw an analogy between SHVERA's equivalent bandwidth requirement and the definition of "unserved household" contained in the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). See Joint Opposition at 5. The statutory provisions are not analogous. SHVIA defines an "unserved household" as one that "cannot receive, through the use of a conventional out door rooftop receiving antenna, an over-the-air signal of grade B intensity (as defined by the Federal Communications Commission) of a primary network station affiliated with that network," and "has not, within 90 days...subscribed to a cable system." 17 U.S.C. § 119(d)(10). Thus, SHVIA in plain terms establishes precise and measurable criteria by which unserved households can be identified. In contrast, SHVERA requires only that a local network station be afforded "at least the equivalent bandwidth" as that afforded the SV station. 47 U.S.C. § 340(b)(2)(B)(i). The Commission interpreted this language to require an "objective comparison" that measures equivalency in terms of bit rate, which, as the Petition demonstrated, is unsupported by the plain language and purposes of the statute. *R&O*, ¶¶ 96 & 99; see also Petition at 2-8.

<sup>23</sup> See Joint Opposition at 3-4, citing *R&O*, ¶ 95.

<sup>24</sup> See *R&O*, ¶ 95 & n.262, citing to 47 U.S.C. § 340(b)(2)(B)(ii) (permitting satellite carriage of an SV station where "the retransmission of the local network station is comprised of the entire bandwidth of the digital signals broadcast by such local network station").

the local network station always will be afforded its entire bandwidth in use so long as it broadcasts a single SD stream.<sup>25</sup> The first two examples cited by the Broadcaster Parties therefore merely restate the rule of the Entire Bandwidth Requirement and thus are irrelevant to the Commission's interpretation of the Equivalent Bandwidth Requirement of which DIRECTV and EchoStar seek reconsideration.

The next example cited by the Broadcaster Parties is the Commission's statement in the *R&O* that SHVERA "precludes 'identical' bandwidth in recognition of the fact that bandwidth use (or bit rate) will fluctuate from moment to moment."<sup>26</sup> Apart from being merely conclusory, this statement is not borne out by the rules the Commission adopted to implement the Equivalent Bandwidth Requirement.<sup>27</sup> The actual standards adopted by the Commission for the carriage of SV stations can be read to require an "objective" matching of bandwidth in real time.<sup>28</sup> Thus, the Broadcaster Parties' quote from the *R&O* is beside the point because ultimately the Commission's

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<sup>25</sup> See *R&O*, ¶ 97 ("[A] satellite carrier may carry the signal of a significantly viewed station only if the amount of bandwidth used to carry such station is *equivalent* to the amount of bandwidth used to carry the signal of the local station affiliated with the same network, unless of course the carrier is carrying the *entire* amount of bandwidth used by the local station for free over-the-air video programming." (emphasis in original)). Indeed, DIRECTV urged such an interpretation of the Entire Bandwidth Requirement in its comments in this proceeding. See Comments of DIRECTV, Inc., MB Docket No. 05-49, at 8-10 (filed Apr. 8, 2005).

<sup>26</sup> See Joint Opposition at 4, citing *R&O*, ¶ 97.

<sup>27</sup> As discussed below, the Commission's adoption of a five percent bit rate tolerance to account for intra-programming fluctuations appears to be the sole instance in the *R&O* where the Commission implemented the Equivalent Bandwidth Requirement in a manner that does not require equal bandwidth to be afforded to local and SV stations. See *infra* at 7. There are no other holdings in the *R&O* relating to "moment to moment" bit rate fluctuations.

<sup>28</sup> See, e.g., *R&O*, ¶ 97 ("We thus conclude that if the SV station transmits in HD and the local station transmits multiplexed (multicast) signal, then a satellite carrier may carry the SV station's HD signal, provided it also carries as many of the local station's multicast channels as necessary *to match* the bandwidth provided to the SV station. This equivalence applies to the local or significantly viewed programming carried *at the same time*." (emphasis added)); *id.* ¶ 100 ("With respect to timing, if the SV station and local station are both multicasting, a satellite carrier may choose to carry only one channel for each station provided the signals are equivalent *during the time they are carried*." (emphasis added)).

implementation of the Equivalent Bandwidth Requirement failed to give effect to its recognition in the *R&O*, and SHVERA's mandate, that equivalent bandwidth does not mean identical or equal bandwidth.

The Broadcaster Parties further contend that the Commission's allowance for the use of different compression or modulation technologies is yet another example of how local and SV stations are permitted to be carried without being afforded equal bandwidth.<sup>29</sup> Here again, the Broadcaster Parties are merely restating the law without addressing the premise of the Petition. SHVERA expressly permits the use of compression technology notwithstanding the Equivalent Bandwidth Requirement.<sup>30</sup> It is hardly surprising therefore that the Commission created an exception to the comparative bit rate approach for the use of different compression technologies between local and SV stations. Indeed, the creation of such an exception for compression technologies faithfully implements the provisions of SHVERA, even though the Commission's comparative bit rate approach to the Equivalent Bandwidth Requirement does not. Contrary to the Broadcaster Parties' suggestion,<sup>31</sup> there is nothing illogical about DIRECTV and EchoStar's position in this respect. The Petition seeks reconsideration of the Commission's application of the comparative bit rate approach as a rule, not of the exception to the rule.<sup>32</sup>

The final example cited by the Broadcaster Parties is the Commission's allowance for a five percent bit rate variation between local and SV stations to account for "fluctuations

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<sup>29</sup> See Joint Opposition at 4, citing *R&O*, ¶ 96 & n.269.

<sup>30</sup> See 47 U.S.C. § 340(i)(4)(A).

<sup>31</sup> See Joint Reply at 6-7.

<sup>32</sup> However, as the Petition points out, the exception appears to be at odds with the rule because whenever different compression technologies are used between local and SV stations the comparison seems to become subjective based on "picture quality" rather than an objective counting of bits. See Petition at 6.

attributable to action or inaction in the programming aired” by the stations.<sup>33</sup> As the Petition points out, this five percent tolerance accounts for only intra-programming fluctuations, whereas the Equivalent Bandwidth Requirement applies more broadly to the overall “digital signal” of local and SV stations, not to the specific programs or content aired by such stations.<sup>34</sup>

In sum, the examples offered by the Broadcaster Parties are either irrelevant to the Commission’s interpretation of the Equivalent Bandwidth Requirement or fail to rebut DIRECTV and EchoStar’s argument that the Commission’s comparative bit rate approach amounts to an equal bandwidth requirement, contrary to the express language and purposes of SHVERA.

### **III. THE REQUIREMENTS OF THE COMPARATIVE BIT RATE APPROACH ARE TECHNICALLY INFEASIBLE.**

In the Petition, DIRECTV and EchoStar argue that the Commission’s interpretation of the Equivalent Bandwidth Requirement effectively forecloses the provision of SV digital signals to DBS subscribers because the comparative bit rate approach appears to require DBS operators to tailor carriage of local and SV stations in real time based on the programming schedules and formats of the stations.<sup>35</sup> The Broadcaster Parties respond that DIRECTV and EchoStar “have not presented a single piece of evidence” that such comparisons are technically infeasible and contend that a satellite carrier’s multiplexing equipment “can dynamically determine in real time” when local and SV stations are broadcasting in HD or multicasting based on PSIP information and MPEG data.<sup>36</sup>

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<sup>33</sup> *R&O*, ¶ 99; *see also* Joint Opposition at 4, citing *R&O*, ¶ 99 & n.278.

<sup>34</sup> *See* Petition at 4, citing 47 U.S.C. § 340(b)(2)(B).

<sup>35</sup> *See* Petition at 7.

<sup>36</sup> Joint Opposition at 8; *see also* Saga Opposition at 4. The Broadcaster Parties also assert that this “evidentiary failure demonstrates why the Petition cannot satisfy the threshold requirements” for seeking reconsideration of the *R&O*. Joint Opposition at 8. As discussed above, this assertion

The fact that technology exists to measure bit rate is not in question. However, the statistical multiplexing equipment discussed in the Joint Opposition does not have the capability of adjusting carriage of local and SV station pairs in real time based on the programming schedules and formats of the stations, as the comparative bit rate approach appears to require.<sup>37</sup> To DIRECTV and EchoStar's knowledge, there is no equipment available today capable of doing so.<sup>38</sup> DIRECTV previously has demonstrated in detail in this proceeding why the Harmonic encoder described in the Joint Opposition is incapable of satisfying the requirements of the Equivalent Bandwidth Requirement as the Commission has interpreted it.<sup>39</sup> Furthermore, the signals that need to be compared often do not come from the same collection facility, or even from the same satellite transponder, because the local and SV stations are located in different Designated Market Areas ("DMAs"). In such cases, there is no technical connection between a local signal in one DMA and a SV signal in another DMA that would enable a DBS operator to match the two signals so that they contract and expand simultaneously.

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misconstrues the Commission's standards for the filing of petitions for reconsideration in rulemaking proceedings.

<sup>37</sup> Even with the use of PSIP information and MPEG data, the equipment discussed in the Joint Opposition is capable of only a fraction of the computations and real-time adjustments needed to comply with the comparative bit rate approach. For example, such equipment does not have the automated ability to gather data across different stat-mux pools, to assess that data and apply rules back into the affected pools, and to simultaneously notify all other affected broadcast systems (such as program guide generators) of the changes, which systems themselves lack the automated ability to accept and execute the changes on a real-time basis.

<sup>38</sup> It is a logical fallacy to require DIRECTV and EchoStar to prove this negative. The Commission therefore should reject the Broadcaster Parties' contention that DIRECTV and EchoStar are required to demonstrate that the technology capable of implementing the requirements of the comparative bit rate approach does not exist, particularly as a prerequisite for seeking reconsideration in this proceeding. *See* Joint Opposition at 8.

<sup>39</sup> *See* Written Ex Parte Communication of DIRECTV, Inc., MB Docket No. 05-49 (filed July 28, 2005).

Even if the matching of bit rates were technically feasible, what is lost in this debate about equivalent bandwidth is the consumer experience. Under the rules adopted by the Commission, subscribers watching an SV station could be constantly subjected to their programming being switched from HD to SD format, or they could lose service entirely (even during the middle of a program) if the DBS operator does not have the right to air the HD programming in SD. Such disruptions would be intolerable from the consumer's perspective, and it is no answer to DBS subscribers that the bit rate of the SV station must equal that of the local station. The only way to prevent these types of disruptions is to carry the "entire bandwidth" of the local stations, which would completely eliminate the "equivalent bandwidth" option that Congress placed in the statute.

#### **IV. THE ANALOG SERVICE REQUIREMENT MUST BE GIVEN ITS PLAIN MEANING.**

In the Petition, DIRECTV and EchoStar demonstrate that the Commission's contextual interpretation of the SHVERA's requirement that a subscriber receive local-into-local analog service as a precondition to receiving the analog signals of SV network stations (the "Analog Service Requirement")<sup>40</sup> is inconsistent with the plain meaning of the statute and places local network affiliates in a position to block carriage SV network stations.<sup>41</sup> The Broadcaster Parties argue that the Commission's contextual reading of the Analog Service Requirement should override the plain meaning of the statute.<sup>42</sup>

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<sup>40</sup> See 47 U.S.C. § 340(b)(1).

<sup>41</sup> See Petition at 9-11. In the *R&O*, the Commission interpreted the Analog Service Requirement to mean that a DBS subscriber must receive a *specific* local network station in order to be eligible to receive the analog signal of a SV station affiliated with the *same* network. See *R&O*, ¶ 70 ("We find that Section 340(b)(1) requires that subscribers receive a specific local network station before they may receive a significantly viewed station that is affiliated with the same network as the local station....").

<sup>42</sup> Joint Opposition at 11-13. Saga contends that the plain meaning interpretation of the Analog Service Requirement advanced by DIRECTV and EchoStar "would completely eviscerate the local-

The language of the Analog Service Requirement is unambiguous and unequivocal.<sup>43</sup> It states that a DBS subscriber must receive “a signal that originates as an analog signal of a local network station” as a precondition to receiving the analog signals of SV network stations.<sup>44</sup> Thus, there is no need to resort to a contextual construction of the statute, as the Broadcaster Parties propose and as the Commission did in the *R&O*.<sup>45</sup> Where the text of a statute is clear, its plain meaning must be given effect,<sup>46</sup> not some theoretical “best” or “better” reading of the statute.<sup>47</sup>

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into-local model” because a DBS provider could import SV signals from larger markets “without ever providing local-into-local service.” Saga Opposition at 4. Such an outcome is unrealistic because under SHVIA’s “carry-one, carry-all” regime local stations still are able to demand carriage if a DBS operator carries at least one local station, and DBS operators are unlikely to sacrifice all local-into-local service in any given market in favor of carrying only SV signals. See 47 U.S.C. § 338(a)(1); 47 C.F.R. § 76.66(b)(1).

<sup>43</sup> See *R&O*, ¶ 70 (“Subscriber receipt of ‘local-into-local’ service is unambiguously required by the statute.”)

<sup>44</sup> 47 U.S.C. § 340(b)(1) (emphasis added).

<sup>45</sup> *R&O*, ¶ 70; see also Joint Opposition at 12 (arguing that the Analog Service Requirement must be read in context).

<sup>46</sup> See, e.g., *Holly Farms Corp. v. National Labor Rels. Labor Bd.*, 517 U.S. 392, 398 (1996), citing *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 843 (1984) (“If a statute’s meaning is plain, the Board and reviewing courts ‘must give effect to the unambiguously expressed intent of Congress.’”).

<sup>47</sup> *R&O*, ¶¶ 70 & 71. As EchoStar pointed out earlier in this proceeding, the Commission’s interpretation of the Analog Service Requirement merely maintains the status quo, against the expressed will of Congress. Before SHVERA was enacted, DBS operators sought consent from local stations prior to importing SV signals. Under the Commission’s interpretation, DBS operators will continue to need such consent in the form of a waiver. See Reply Comments of EchoStar Satellite LLC, MB Docket No. 05-49, at 3-4 (filed Apr. 29, 2005). In addition, the contextual interpretation advanced by Broadcaster Parties and accepted by the Commission relies on the wrong context. The digital service provision of Section 340(b)(2) provides a more direct context for Section 340(b)(1). See 47 U.S.C. §§ 340(b)(1) & (2). Read together, these two provisions cannot mean that carriage of the local station “affiliated with the same television network” is required for the importation of an *analog* TV station. This requirement is in place for the importation of *digital* signals under Section 340(b)(2). Congress expressed itself with such clarity that the Commission must give meaning to the difference between Sections 340(b)(1) and (b)(2). Finally, if Congress meant what the Commission says it did, it would not have enacted legislation for carriage of SV stations in the first place. The legislation was primarily meant to dispense with the limitations applicable to the importation of distant signals, such as the restriction to serve unserved households, the number of stations that can be imported, etc. See 17 U.S.C. § 119. However, all of those limitations could be waived by the local

Ultimately, this issue should be resolved in the best interests of consumers, not in terms of “regulatory-imposed negotiating advantage[s]” between local network stations and DBS operators.<sup>48</sup> DBS operators want to deliver the local and SV signals their subscribers desire in order to be competitive with the services offered by cable operators. SHVERA was enacted to enable DBS operators to do just that.<sup>49</sup> A plain meaning interpretation of the Analog Service Requirement is consistent with SHVERA’s goals and will benefit consumers more than a contextual interpretation that permits local network affiliates to withhold analog retransmission consent unless the DBS operator agrees not to import SV signals.<sup>50</sup>

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station without need to enact legislation permitting the carriage of SV stations. By allowing a local station to block the importation of a SV station, the Commission has effectively turned the clock back to the time prior to SHVERA's enactment.

<sup>48</sup> Joint Opposition at 13.

<sup>49</sup> See House Commerce Committee Report dated July 22, 2005, accompanying House Bill, H.R. 4501, 108<sup>th</sup> Cong. (2004), H.R. Rep. No. 108-634, at 2 (2004) (“The purpose of H.R. 4501, the ‘Satellite Home Viewer Extension and Reauthorization Act of 2004’ (SHVERA), is to modernize satellite television policy and to enhance competition between satellite and cable operators. It does so by...increasing regulatory parity by extending to satellite operators the same type of authority cable already have to carry ‘significantly viewed’ signals into a market....”).

<sup>50</sup> See Petition at 10-11.



## **V. CONCLUSION**

The Broadcaster Parties and Saga have failed to refute DIRECTV and EchoStar's argument that the Commission's interpretation of the Equivalent Bandwidth Requirement amounts to an equal bandwidth requirement that is both technically unfeasible and contrary to the express language and purposes of SHVERA. Likewise, the Broadcaster Parties and Saga have failed to demonstrate why a contextual reading of the Analog Service Requirement should be favored over the plain meaning of the statute. For the foregoing reasons, DIRECTV and EchoStar respectfully request that the Commission grant the Petition for Reconsideration filed in this proceeding.

Respectfully submitted,

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March 15, 2006

## CERTIFICATE OF SERVICE

I, Stacy Fuller, of DIRECTV, Inc., certify that a copy of the foregoing Consolidated Reply to Oppositions of DIRECTV, Inc. and EchoStar Satellite LLC, was served, except as otherwise noted, via first-class mail on this 15th day of March 2006, upon the following:

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